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5 DRIVE PVT, LLC
6

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
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10 AMAZON.COM, INC et al,
11 Plaintiff,
12 vs.

13 MUHAMMAD MUDASSAR
ANWAR, an individual, TECH DRIVE
14 PVT, LLC, a New York Limited
Liability Company, et al.
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Defendants.
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Case No.: 3:23-cv-05580-TLT-RI

Honorable Judge: Trina L. Thompson

**NOTICE OF MOTION AND
MOTION TO SET ASIDE DEFAULT
AND DISMISS CASE FOR LACK
OF PERSONAL JURISDICTION**

Hearing

Date: February 25th, 2025

Time: 2:00 p.m.

Place: 450 Golden Gate Avenue,
Courtroom #9 (19th Floor) San
Francisco, CA 94102.

23 **NOTICE OF MOTION TO SET ASIDE DEFAULT AND DISMISS**
24 **THE CASE AGAINST DEFENDANT UNDER FRCP** rules 12(b)(2) and
25 12(b)(3), 55(c) and 60(b) for lack of personal jurisdiction. Comes now
26 MUHAMMAD MUDASSAR ANWAR, an individual, and TECH DRIVE PVT,
27 LLC, a New York company, now closed, (“Defendants”) providing notice that it
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1 will move this court for such Order which hearing shall be heard on **February 25th,**
2 **2025 at 450 Golden Gate Avenue, Courtroom #9 at 2:00 p.m.,** or at such time as
3 the court may order. The grounds for this motion are that there is no personal
4 jurisdiction and no minimum contacts with California to justify either general or
5 specific jurisdiction over Defendants and the default entered is thus null and void.
6 There was no reasonable basis for filing the instant lawsuit in California and proper
7 venue and jurisdiction is in New York which is based on a single address on a
8 website (which Defendants did not put there at any rate).

9 Undersigned counsel has discussed this with Plaintiff counsel who asserts that
10 jurisdiction is proper due to a website that had a California address. They would
11 not agree to set aside the default, necessitating the filing of this motion.

12 Defendant requests a telephonic motion pursuant to *Local Rule 7.1(b)* if a
13 hearing is required.

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15 Respectfully Submitted,

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17 /s/SteveVondran
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25 MUHAMMAD MUDASSAR ANWAR
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I. MEMORANDUM OF POINTS AND AUTHORITIES

1. Background Facts

Defendants MUHAMMAD MUDASSAR ANWAR and TECH DRIVE PVT, LLC have been sued for alleged involvement in a fraudulent scheme using Plaintiff's intellectual property. Defendant denies all allegations of wrongdoing. Defendant's declaration confirms that there is no grounds to exercise personal jurisdiction over the defendant in this court. The proper court would be located in the relevant jurisdiction and venue in New York.

2. Issues to be decided

- A. Whether there are proper grounds to set-aside the default under FRCP Rules 55(c) and 60(b)?
- B. Whether the case should be dismissed for lack of personal jurisdiction under F.R.C.P Rule 12(b)(2) and 12(b)(3) for lack of proper in personam jurisdiction and venue.

II. LEGAL STANDARD

Under *Federal Rule of Civil Procedure 60(b)(4)*, a district court may set aside a default judgment if the judgment is void. A final judgment is "void" for purposes of Rule 60(b)(4) when the issuing court lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound. United States v. Berke, 170 F.3d 882, 883 (9th Cir. 1999); also see S.E.C. v. Internet Solutions for Bus. Inc., 509 F.3d 1161, 1165 (9th Cir. 2007) ("A final judgment is void, and therefore must be set aside under *Federal Rule of Civil Procedure 60(b)(4)*, "if the

1 court that considered it lacked jurisdiction ... over the parties to be bound.”); Mason
2 v. Genisco Technology Corp., 960 F.2d 849, 851 (9th Cir.1992).

3 A motion to vacate a default judgment for lack of jurisdiction may be made at
4 any time. SEC v. Internet Solutions for Bus. Inc., 509 F.3d at 1165. When a court
5 lacks personal jurisdiction over a defendant, it has a “nondiscretionary duty” to
6 grant relief from any default judgment issued. Thomas P. Gonzalez Corp. v.
7 Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247, 1256 (9th Cir.
8 1980). Further, *F.R.C.P 55(c)* states “[t]he court may set aside an entry of default
9 for good cause. . .” Good cause exists for this Court to set aside the default judgment
10 in this case because the Court lacked personal jurisdiction over this case and the
11 venue is improper. The Supreme Court has repeatedly held that “[f]ederal courts
12 are courts of limited jurisdiction,’ possessing only that power authorized by
13 Constitution and statute.” Gunn v. Minton, 568 U.S. 251, 256 (2013) (quoting
14 Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 373, 377 (1994)).
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19 **A. There is no general jurisdiction.**
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21 There is no facts alleged or asserted in the Complaint to support any finding
22 of a *systematic and continuous* presence by Defendant in the State of California. In
23 fact, as to each Defendant Plaintiff explicitly notes they are domiciled in New York
24 (see Complaint P. 5 lines 8-12). On page 6 of the complaint they list the grounds
25 for jurisdiction, which Defendants allege is factually lacking prima facie grounds
26 to establish venue and general jurisdiction. Their allegations state:
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1 27. The Court has personal jurisdiction over Defendants, all of whom have conducted
2 business activities in and directed to California. At all times material to the allegations herein,
3 Defendants did business directed to California, and operated infringing websites that listed
4 business addresses in Santa Clara County, California.

5 28. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a
6 substantial part of the events giving rise to the claims occurred in the Northern District of
7 California.

8
9 As the attached Defendant's declaration avers however, this is simply not true, and
10 he has *no minimum contacts* with the State of California sufficient to confer general
11 jurisdiction or proper venue over either Defendant. Moreover, a business website
12 is not sufficient to confer jurisdiction, even if taken as true. General jurisdiction
13 requires a showing of much more to satisfy due process requirements.

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15 A plaintiff bears the burden of establishing personal jurisdiction over all
16 defendants. Ziegler v. Indian River County, 64 F.3d 470, 473 (9th Cir. 1995) (citing
17 Farmers Ins. Exch. v. Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir.
18 1990)). A defendant may move to dismiss a complaint for lack of personal
19 jurisdiction. *Fed. R. Civ. P. 12(b)(2)*. When a defendant does so, "the plaintiff is
20 obligated to come forward with facts, by affidavit or otherwise, supporting
21 personal jurisdiction." Cummings v. W. Trial Lawyers Assoc., 133 F. Supp. 2d.
22 1144, 1151 (D. Ariz. 2001).
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B. There is no specific jurisdiction.

Courts in the Ninth Circuit apply a three-part “minimum contacts” test to determine whether a defendant has sufficient contacts to subject to specific personal jurisdiction. Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1142 (9th Cir. 2017); *This test looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.* Burger King, 471 U.S. at 475. To determine whether specific personal jurisdiction has been established, courts in the Ninth Circuit apply a three-prong “*minimum contacts*” test; (1) the non-resident defendant must **purposefully direct** his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which **arises out of or relates to** the defendant’s forum related activities; and; (3) the exercise of jurisdiction **must comport with fair play and substantial justice**, i.e. it must be reasonable. (emphasis added). Morrill, 873 F.3d at 1142.

A plaintiff must satisfy both of the first two prongs to establish personal jurisdiction. “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be reasonable.” Burger King, 471 U.S. at 476–78. If one of the first two prongs is not met, the and the inquiry ends there, and the Court does not have personal jurisdiction over the defendant.

1 **(i) “Purposefully directed”**

2 To determine the first prong of the minimum contacts test, the Ninth
3 Circuit has established separate inquiries depending on whether the nature of the
4 claims at issue arise from a contract or alleged tortious conduct. See Morrill, 873
5 F.3d at 1142. Plaintiff’s Complaint alleges, in essence, a trademark infringement
6 via the use of a fraudulent website. Thus, the court should apply the “*purposeful*
7 *direction*” inquiry to determine whether the first prong of the minimum contacts
8 test is met (applying the purposeful direction test in evaluating plaintiff’s wrongful
9 institution of civil proceedings); see also Picot v. Weston, 780 F.3d 1206, 1212 (9th
10 Cir. 2015). The purposeful direction inquiry “requires that the defendant:

- 11 (1) committed an intentional act,
12 (2) expressly aimed at the forum state,
13 (3) causing harm that the defendant knows is likely to be suffered in the forum
14 state.” *Dole Food*, 303 F.3d at 1111.

15 Actions may be directed at the forum state even if they occurred
16 elsewhere. However, “*random, fortuitous, or attenuated contacts*” are insufficient
17 to create the requisite connection with the forum. *Burger King*, 471 U.S. at 475.

18 Here, Plaintiff fails to allege facts giving rise to specific personal
19 jurisdiction. Any claimed acts of wrongdoing are fortuitous or attenuated at best
20 and amount to little more than using a website with a California address on it.
21 Defendants deny any such wrongdoing as sworn to in their declaration, but even
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1 assume Plaintiff's facts as true, there is no purposeful direction of conduct toward
 2 California. There is no allegation that the website at issue is "*interactive*." In
 3 Carroll v. J.M. Smucker Co. (N.D.Cal. June 15, 2023, No. C 22-08952 WHA) 2023
 4 U.S.Dist.LEXIS 104522, at *7-8 the Court held:

6 "Our court of appeals has considered "the question whether tortious conduct
 7 on a nationally accessible website is expressly aimed at any, or all, of the
 8 forums in which the website can be viewed" for purposes of
 9 specific personal jurisdiction. *Mavrix Photo*, 647 F.3d at 1229. "***On the one***
 10 ***hand, we have made clear that 'maintenance of a passive website alone***
 11 ***cannot satisfy the express aiming prong.'***" *Ibid.* (quoting *Brayton Purcell*
 12 *LLP v. Recordon & Recordon*, 606 F.3d 1124, 1129 (9th Cir.
 13 2010)). Nevertheless, "[o]n the other, we have held that 'operating even a
 14 passive website in conjunction with "***something more***" [*8] — conduct
 15 directly targeting the forum — is sufficient." *Ibid.* (quoting *Rio Props. v.*
 16 *Rio Int'l Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002)). "In determining
 17 whether a nonresident defendant has done 'something more,' we have
 18 considered several factors, including the ***interactivity of the***
 19 ***defendant's website, . . . the geographic scope of the defendant's***
 20 ***commercial ambitions, . . . and whether the defendant 'individually***
 21 ***targeted' a plaintiff known to be a forum resident.***" *Ibid.* (citations
 22 omitted). "In *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir.
 23 1997), we discussed with approval a sliding scale analysis that looks to
 24 how interactive an Internet website is for purposes of determining its
 25 jurisdictional effect." *Boschetto v. Hansing*, 539 F.3d 1011, 1018 (9th Cir.
 26 2008) (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119,
 27 1124 (W.D. Pa. 1997)).

21 Here, Plaintiff fails to allege the "*something more*" that would provide a
 22 possible grounds for jurisdiction. There are no sufficient allegations in this regard.
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24 **(ii) "Arises out of or relates to"**

25 For specific jurisdiction to exist a claim "'must be one which *arises out of or*
 26 *relates to* the defendant's forum-related activities.'" Axiom Foods, 874 F.3d at 1068
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(quoting Dole Food Co., 303 F.3d at 1111) (emphasis added). This is a claim-tailored inquiry that requires us to examine the plaintiff's specific injury and its connection to the forum-related activities in question. See Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty., 582 U.S. 255, 262, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017) (explaining that "there must be 'an affiliation between the forum and the underlying controversy'" (quoting Goodyear, 564 U.S. at 919)); Williams v. Yamaha Motor Co. Ltd., 851 F.3d 1015, 1022-23 (9th Cir. 2017) ("In order for a court to have specific jurisdiction over a defendant, 'the defendant's suit-related conduct must create a substantial connection with the forum State.'" (quoting Walden, 571 U.S. at 284)). See Briskin v. Shopify, Inc. (9th Cir. 2023) 87 F.4th 404, 413.

Here, there is no substantial connection by Defendant to the forum. The alleged harm is not specific to California or its citizens. Merely having a website that California residents can search and find online is attenuated and insubstantial contact at best and there is no plausible argument this is a proper venue in any event.

A purely "passive" website that merely hosts information "does not qualify as purposeful activity invoking the benefits and protections" of the fora in which the website may be viewed. Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 420 (9th Cir. 1997); see also Herbal Brands, 72 F.4th at 1091 ("It is well settled that '[m]ere passive operation of a website is insufficient to demonstrate express aiming.'" (quoting Will Co., 47 F.4th at 922)). For these reasons, Plaintiff cannot

1 satisfy prong two, also warranting dismissal of the action. Briskin v. Shopify,
2 Inc. (9th Cir. 2023) 87 F.4th 404, 417.)

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4 **(iii) “Reasonable and fair”**

5 Even if Plaintiff were to be found to have satisfied the first two prongs,
6 it would still offend traditional notions of fair play and substantial justice and
7 would cause unreasonable financial hardship to defendant to be forced to appear
8 in California. Per his attached declaration, Defendant has no business operations
9 in California, much less in this District, owns no property, has no employees and
10 has no other meaningful contacts with California. The Supreme Court has stated
11 that obtaining personal jurisdiction over a defendant based on its contacts with the
12 state must not “*offend traditional notions of fair play and substantial justice.*” See
13 International Shoe Co. v. Washington, 326 U.S. 310 (1945). The exercise of
14 personal jurisdiction and venue in this case would violate due process. Defendant
15 would be forced to fly to California and defend this action, where he had no
16 possible reason to believe he could be sued in California, much less being innocent
17 of the claimed wrongdoing. Thus, Plaintiff cannot meet its burden.
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22 **III. CONCLUSION**

23 For these reasons, the default entered by the Court as noted herein should be
24 set aside and the case be dismissed for lack of personal jurisdiction, and the Court
25 should sign the submitted [proposed] ORDER.
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Respectfully Submitted,

Date: December 20, 2024

/s/SteveVondran
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MUHAMMAD MUDASSAR ANWAR

PROOF OF SERVICE - CCP §§ 1013a, 2015.5

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 620 Newport Center Drive, Suite 1100, Newport Beach, CA 92660

On the date and time set forth below, I electronically served the foregoing document described as

MOTION TO SET ASIDE THE DEFAULT AND DISMISS THE CASE

on the interested parties in this action as follows:

Davis Wright Tremaine LLP

jakefreed@dwt.com

emilygoodell@dwt.com

The foregoing document was electronically served, or caused to be served, on the PERSONS listed above on December 20, 2024.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 20, 2024, at Newport Beach, California.

By: /s/ Lisa Vondran

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